United States Department of Labor
Employees' Compensation Appeals Board

P.F., Appellant	)	
and	)	**Docket No. 07-200**
	)	**Issued: March 28, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Troy, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 30, 2006 appellant filed a timely appeal from the August 24, 2006 merit decision of the Office of Workers' Compensation Programs which denied compensation for disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether appellant's disability beginning June 27, 2006 is causally related to her May 5, 2006 employment injury.

FACTUAL HISTORY

On May 5, 2006 appellant, then a 40-year-old rural mail carrier, injured her right arm in the performance of duty, "Reaching to retrieve bundle, had sharp pain in right arm." She returned to limited duty and received periods of continuation of pay through June 27, 2006. The Office accepted appellant's claim for right medial epicondylitis.

On July 6, 2006 appellant filed a claim for wage loss beginning June 27, 2006. On July 17, 2006 the Office asked her to submit additional information to support her claim:

> "Please have your medical doctor provide a well-reasoned explanation which supports total disability for June 27, 2006 onward. Your doctor is to cite any change in objective findings, symptoms or test results which supports that any condition attributable to your employment worsened. Increased complaints of pain alone may not be sufficient to support total disability for all work, even limited duty."

In an undated disability certificate, appellant's chiropractor, Dr. Mark J. Eavenson, reported that he saw appellant on July 24, 2006 and that she was not to report to work until further notice: "[Appellant] is not able to return to work due to weakness in her right arm/hand as well as swelling over the medial elbow. Her grip strength is approximately 10 pounds less than her left hand."

In a decision dated August 24, 2006, the Office denied appellant's claim of disability beginning June 27, 2006. The Office found that documented weakness and swelling in the right arm was not a well-reasoned explanation of how these symptoms rendered appellant totally disabled from her restricted-duty assignment.

LEGAL PRECEDENT

A claimant seeking benefits under Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[2] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[3] Causal relationship is medical in nature and can be established only by medical evidence.[4]

As used in the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.[5] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[6]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Ausberto Guzman*, 25 ECAB 362 (1974).

[5] 20 C.F.R. § 10.5(f) (1999).

[6] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

Section 8101(2) of the Act[7] provides that the term "physician," as used therein, "includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary." Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence.[8]

ANALYSIS

When her entitlement to continuation of pay expired, appellant claimed compensation for total disability beginning June 27, 2006. She has the burden of proof to establish that her disability was causally related to her May 5, 2006 employment injury. The only evidence appellant submitted to support her claim, however, was an undated disability certificate from her chiropractor, Dr. Eavenson. Because Dr. Eavenson did not diagnose a subluxation of the spine from x-ray, he is not considered a "physician" under the Act. As such, his reports does not constitute probative medical evidence.

Appellant has not met her burden of proof to establish that her disability beginning June 27, 2006 was causally related to her May 5, 2006 employment injury. The Board will affirm the Office's August 24, 2006 decision for want of competent, probative medical evidence supporting her claim of wage loss.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her disability beginning June 27, 2006 is causally related to her May 5, 2006 employment injury.

[7] 5 U.S.C. § 8101(2).

[8] *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 28, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board